

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DIANA MEY,
CRAIG CUNNINGHAM,
STEWART ABRAMSON, and
JAMES SHELTON,
individually and on behalf of a class of all
persons and entities similarly situated,**

Plaintiffs,

vs.

Case No. 5:17-cv-00179-JPB

DIRECTV, LLC;

and

**ADAM COX;
AC1 COMMUNICATIONS;
IQ MARKETING 2, CORP., d/b/a PACIFICOM;
MICHAEL ASGHARI;
NAS AIR LOGISTICS;
JOHN MATTHEWS;
BIRJU, LLC;
PIC SIX, LLC;
MYLAN JOHNSON GROUP;
XCITE SATELLITE, LLC;
EXACT ESTIMATING, LLC;
CDS V1, LLC d/b/a COMPLETE DIGITAL SOLUTIONS;
KREATAMOTIVE LLC;
EXPLOSIVE SALES MARKETING GROUP, INC.**

Defendants.

**PLAINTIFFS' MOTION TO COMPEL RESPONSES TO PLAINTIFFS' FIRST SET OF
DISCOVERY REQUESTS TO AC1 COMMUNICATIONS**

NOW COME the Plaintiffs, by counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure and LR Civ P 37.02, and move to compel Defendant AC1 to supplement its prior discovery responses as set forth below.

Plaintiffs acknowledge that one day prior to the filing of this Motion, counsel for AC1 moved to withdraw from representation. The fact remains, however, that Plaintiffs have been seeking the disputed discovery responses for over two months, and AC1 should not be permitted to stall this litigation or prejudice Plaintiffs' preparation of their case through further delays. Plaintiffs respectfully request that the Court order AC1 to answer the outstanding discovery immediately, regardless of whether it permits counsel to withdraw.

BACKGROUND

This is a TCPA action in which Plaintiffs allege that Defendant AC1 and others illegally and repeatedly called their numbers which were registered on the federal Do Not Call registry, and/or violated the statute by using automated technology to call their cellular telephones. Plaintiffs seek production of the following documents, each of which are known to already easily accessible from AC1's present custody: (1) the call records and associated documents probative of these calls, in the same format in which they were produced to AC1 by its vendor; (2) documents evidencing the vicarious liability relationship between AC1 and DirecTV; and (3) Defendant's internal communications concerning, DirecTV, outbound telemarketing or TCPA compliance over the last four years. Plaintiffs also ask that Defendant be compelled to identify the persons responding to the interrogatories and the information possessed by each, so that Plaintiffs may make informed decisions about who to depose, and might conduct those depositions efficiently.

In support of this Motion, Plaintiffs attach *Exhibit A*, the meet and confer exchanges among counsel, and the accompanying Memorandum of Law in support hereof; and *Exhibit B*, an affidavit from XenCall, a vendor for AC1, which are referenced in the arguments herein.

Certification of Good Faith Conference

Counsel for Plaintiffs, Sharon F. Iskra, Esq. and Anthony Paronich, Esq. certify that they conferred in good faith with Bryan N. Price, Esq., counsel for AC1 and Adam Cox via multiple email exchanges between December 12, 2018 and February 11, 2019, and through a phone call between Sharon F. Iskra, Esq. and Bryan N. Price, Esq. on February 20, 2019. While several issues were resolved through these communications, the parties seek the Court's ruling on those set forth above.

Dated: February 21, 2019

Respectfully submitted by,

/s/ John W. Barrett
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EXPLOSIVE SALES MARKETING GROUP, INC.**

Defendants.

CERTIFICATE OF SERVICE

I, John W. Barrett, hereby certify that on February 21, 2019, I served a true and correct copy of "*Plaintiffs' Motion to Compel Responses to Plaintiffs' First Set of Discovery Requests to AC1 Communications*" was filed with the Clerk of Court using the CM/ECF System, which caused a true and accurate copy of such filing to be served upon the following counsel of record:

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